51 L. Ed. 724, 10 Ann. Cas. 733) is controlling here. I am of a contrary opinion. A study of that case will disclose the fact it is predicated upon the principle that intoxicating liquors, by reason of their very inherent nature and the results which flow from their use, had theretofore by the Congress in the Wilson Act (26 Stat. 313, Comp. St. 1916, sec. 8738) been withdrawn from that protection against state interference universally accorded to interstate commerce in other commodities, whereas such discrimination against cigarettes or tobacco in any form carried in interstate commerce has not as yet been made by the Congress. This fact, to my mind, distinguishes the Delamater case and the case of State ex rel. Black *v.* Delaye (193 Ala. 500, 68 South. 993, L. R. A., 1915E, 640) from the present case."

Principal and Surety—Discharge of Surety—Strictissimi Juris.—In Matchett *v.* Winona Assembly & Summer School Ass'n, 113 N. E. 1, in the Supreme Court of Indiana, it was held that where, on December 31, 1909, a creditor accepted payment of interest on an overdue note in excess of the amount due, and indorsed on the note interest paid to December 5, 1910, payment of the original debt was thereby extended and the sureties released.

It was laid down that the rule strictissimi juris applied to contracts of suretyship in favor of volunteer individual sureties, but not in favor of corporate surety companies, should be applied for the benefit of stockholders of a corporation not conducted for profit, although the rule might not apply in the case of corporations conducted for profit. The court said in part:

"It is stated in the tenth finding that at the time the note in suit was extended John F. Beyer, Christian C. Beyer and J. Edward Beyer were each the owner of $100 of the capital stock of the Winona Assembly & Summer School Association, and that John F. Beyer was at that time a member of the board of directors of that corporation. It further appears from this finding that the money borrowed on the note was used for the benefit of the corporation, and that there was no change in the financial responsibility of the principal maker of the note between December 31, 1909, and January 5, 1910. On behalf of appellants it is claimed that the facts thus stated take the sureties in this case out of the class in whose favor the rule of strictissimi juris is applied and place them in a class of sureties which cannot invoke that rule in their favor for the reason that they have a beneficial interest in the contract upon which they are sureties. The trend of modern authority is to distinguish between contracts of suretyship entered into by individuals through friendship or other similar motives and like contracts made by corporations organized for the express purpose of acting as surety for a consideration. The rule of strictissimi juris is applied to the former,

but not to the latter (Young *v.* Am. Bonding Co., 228 Pa. 373, 77 Atl. 623; United States Fidelity Co. *v.* Poetker, 180 Ind. 255, 102 N. E. 372).

"Appellants assert that the same rule should be applied to the contract of an individual who is surety of a corporation of which he is a stockholder that is applied to the contracts of surety companies whose business it is to act as surety for a compensation. It must be borne in mind, however, that the business of these corporations closely resembles that of insurance, and their contracts are treated and construed as contracts of indemnity, rather than suretyship (Atlantic, etc., Co. *v.* Laurinburg, 163 Fed. 690, 90 C. C. A. 274; Philadelphia *v.* Fidelity, etc., Co., 231 Pa. 208, 80 Atl. 62, Ann. Cas. 1912B, 1085; Boppart *v.* Illinois Surety Co., 140 Mo. App. 683, 126 S. W. 768, Ann. Cas. 1912B, note at p. 1087).

"An examination of the cases cited will show that the reason for the rule applied to the contracts of surety companies does apply with equal force to the contract of a person who is surety for a corporation in which he owns stock. The corporation is a distinct legal entity, and the benefits which may accrue to a stockholder from a loan of money to the corporation are indirect and incidental merely in proportion to the stock owned by him at the time of the loan.

"Little authority can be found bearing directly on the question here presented. The rule has been thus stated:

"'As the promise of a shareholder to pay a debt of the corporation is a promise to pay the debt of another, it entitles the promisor to all the rights and remedies of a surety as to extensions and renewals of credits not authorized by him' (10 Cyc. 651).

"The case of Home Nat. Bank *v.* Waterman (134 Ill. 461, 29 N. E. 503), cited to sustain the text, seems to support the rule stated, as does also the case of Pelton *v.* San Jacinto Lumber Co. (113 Cal. 21, 45 Pac. 12). The later case of First National Bank *v.* Livermore (90 Kan. 395, 133 Pac. 734, 47 L. R. A., N. S., 274) sustains the position of appellants, holding that a principal stockholder who signs a note with a corporation intending to be bound only as surety is not entitled to the same liberality of treatment which the law accords to a volunteer surety, and that where such a corporation is granted an extension of time for a consideration, the stockholder, although he did not consent to such extension, is not released, unless he suffered some injury therefrom.

"The principal authority cited in support of the Kansas case is that of Richardson *v.* Draper (87 N. Y. 337). In that case ten persons who were the principal stockholders and promoters of a business corporation jointly guaranteed bonds issued by the corporation and secured by a mortgage on its property. The court held that these guarantors did not stand in the position of volunteer sureties.

and were not entitled to all of the rights and remedies which the law accords to such. The court said:

"'Here the joint guarantors owned nearly all of the stock of the corporation. They, with other persons interested in the corporation, desired that it should commence the business for which it was incorporated. It may be presumed that the purpose was to make profit for the benefit of the stockholders. No benefit to the corporation as an abstract entity, apart from its stockholders, could have been contemplated. * * * Therefore in guaranteeing the bonds the obligors did not act as mere sureties; they were seeking a benefit for themselves in promoting an enterprise in which they were largely interested. Whatever would benefit the company would benefit them. They were acting to put profits in their own pockets, and by means of the guaranty they actually obtained for their corporation the land donated and the $150,000. Under such circumstances the equities of the obligees and that attaching to the estate of the deceased obligor are not equal; that is, the equity of the estate to be discharged from liability is not so strong as the equity of the respondents to be paid out of the estate.'

"In this case, as in the Kansas case, it appeared that the corporation for whose debt the stockholders were surety was one engaged in conducting business for profit, and that the sureties as stockholders were largely interested in the success of the corporation. Even though the rule announced in the Kansas case may be properly applied to the facts there shown, its application certainly must be limited to the stockholders of corporations organized and conducted for business and profit, and who for that reason have a financial interest in the success of such corporation.

"In this case it appears from the special finding that the sureties on the note in suit each owned one share of stock of the par value of $100 in the Winona Assembly & Summer School Association, but it does not appear that such corporation was engaged in a business enterprise conducted for the purpose of making profit for the stockholders."